



## O'MELVENY & MYERS LLP

BEIJING  
BRUSSELS  
CENTURY CITY  
HONG KONG  
JAKARTA  
LONDON  
LOS ANGELES

2765 Sand Hill Road  
Menlo Park, California 94025  
TELEPHONE (650) 473-2600  
FACSIMILE (650) 473-2601  
[www.omm.com](http://www.omm.com)

NEWPORT BEACH  
NEW YORK  
SAN FRANCISCO  
SHANGHAI  
SINGAPORE  
TOKYO  
WASHINGTON, D.C.

October 9, 2012

WRITER'S DIRECT DIAL  
(650) 473-2680

### **VIA E-FILE & HAND DELIVERY**

WRITER'S E-MAIL ADDRESS  
[svankeulen@omm.com](mailto:svankeulen@omm.com)

Honorable Ronald M. Whyte  
United States District Court  
Northern District of California  
280 S. First Street  
San Jose, CA 95113

**Re: *Hynix Semiconductor Inc., et al., v. Rambus Inc.,  
United States District Court, Northern District of California,  
Case No. CV 00-20905 RMW***

Dear Judge Whyte:

I am writing with regard to the Court's Findings of Fact and Conclusions of Law on Spoliation and the Unclean Hands Defense, issued September 21, 2012 ("9/21 Order"). In the 9/21 Order, the Court concluded that it would "strike from the record evidence supporting a royalty in excess of a reasonable, non-discriminatory royalty." 9/21 Order at 65:10-12. The Court directed the parties to "submit supplemental briefs, not to exceed twenty pages, addressing what a reasonable, non-discriminatory royalty rate would be with respect to the patents-in-suit. The briefing shall address specifically the royalty rates obtained by Infineon, Samsung, and any other relevant competitors of Hynix." *Id.* at 65:15-17. Hynix's brief is presently due on or before October 12, 2012, and Rambus's brief is presently due on or before October 26, 2012. *Id.* at 65:18-66:1. For the reasons set forth below, the parties jointly request a modification to the briefing schedule, such that Hynix's brief shall be submitted on or before October 23, 2012, and Rambus's brief shall be submitted on or before November 6, 2012.

Hynix intends to address in its brief the royalty rates obtained by Infineon, Samsung and Elpida.<sup>1</sup> The 2005 Infineon licensing agreement has been produced in this case and is available for Hynix to use in its brief, subject to the existing protective order. By contrast, the 2010

<sup>1</sup> The referenced license agreements are (1) the Semiconductor Patent License Agreement between Rambus, Inc. and Samsung Electronics Co., Ltd., dated on or about January 19, 2010; (2) the Memory Products Patent License Agreement between Rambus Inc. and Elpida Memory, Inc., effective date January 1, 2010; and (3) the Settlement Agreement and License Agreement between Rambus and Infineon, effective date March 18, 2005.

O'MELVENY & MYERS LLP

Honorable Ronald M. Whyte, October 9, 2012 - Page 2

license agreements between Rambus and, respectively, Samsung and Elpida have not been produced for use in this case. Although Rambus does not concede that these recent agreements are relevant to the Court's analysis, Rambus has provided notice to Samsung and Elpida (as required under the licenses) of Hynix's request for the agreements and has informed each of them that it will wait ten business days (as required under the licenses) before providing the agreements to Hynix for use in this case, subject to a stipulated protective order. Samsung and Elpida have not yet responded to Rambus's requests; we understand from Rambus that the ten-day period will expire next week.

For these reasons, the parties jointly request that the briefing schedule provided for in the 9/21 Order be modified as follows: Hynix's brief shall be submitted on or before October 23, 2012 and Rambus's brief shall be submitted on or before November 6, 2012, without prejudice to Hynix's right to seek a further extension of the briefing schedule should the Samsung and Elpida license agreements not be produced to Hynix in adequate time for Hynix to make effective use of them in its October 23, 2012 brief. Accordingly, I am submitting herewith a Stipulation and Order Extending Schedule for Supplemental Briefing Regarding Remedy, which has been approved by Hynix and by Rambus.

Very truly yours,



Susan van Keulen  
of O'MELVENY & MYERS LLP

SVK:pc/

cc: All counsel on ECF Service List (via e-file)